

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 20-cv-02296-RM-SKC

ELSON FOSTER,

Plaintiff,

v.

BRIAN FLYNN,
CHARLENE BENTON, and
RUTH ANN BRIGHAM,

Defendants.

ORDER

Before the Court is the Recommendation of United States Magistrate Judge S. Kato Crews (ECF No. 33) to grant in part and deny in part Defendants' Motion to Dismiss (ECF No. 20). Neither party has objected to the Recommendation, and the time to do so has expired.

Plaintiff contends he was unlawfully arrested seven times in three months for violating a mandatory protection order that had expired. He asserts that expired protection orders are not timely removed from the central registry system used in the 21st Judicial District, and therefore Defendants, who have roles in maintaining that system, violated his rights under the Fourth and Fourteenth Amendments.

The magistrate judge determined the Complaint fails to allege Defendant Benton, the Clerk of Court for the District, and Defendant Brigham, a supervisor for the District, had any authority to implement different policy with regard to how the central registry system was maintained. Thus, there is no "affirmative link" between these Defendants and the alleged

deprivation of Plaintiff's constitutional rights, and the Complaint fails to state a claim against either of them.


The magistrate judge also determined that since protection orders expire as a matter of law, removing them from the central registry is an administrative task, not a judicial act protected by absolute judicial immunity. Further, the magistrate judge determined the right to be arrested only with probable cause has been established for some time, and that it should have been clear to any reasonable official, much less a chief judge, that maintaining a policy which results in arrests lacking probable cause based on expired protective orders violates the arrestees' due process rights. Accordingly, the magistrate judge determined that the Motion to Dismiss should be denied with respect to the claims asserted against Defendant Flynn.

The Court discerns no error with respect to the magistrate judge's analysis, and the Recommendation is hereby incorporated in its entirety into this Order. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); *see also Summers v. Utah*, 927 F.3d 1165, 1167 (10th Cir. 1991) ("In the absence of a timely objection, the district court may review a magistrate judge's report under any standard it deems appropriate.").

Therefore, the Court ACCEPTS the Recommendation (ECF No. 33) and GRANTS IN PART and DENIES IN PART the Motion to Dismiss (ECF No. 20) for the reasons stated in the Recommendation.

DATED this 26th day of July, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", is written over a horizontal line.

RAYMOND P. MOORE
United States District Judge